S.B. Civil Misc. Appeal No.1806/2006

Smt. Bagdi Bai
vs.
Smt. Pushpa Bai and others.

Date : 1.12.2006

HON'BLE MR. PRAKASH TATIA, J.

Mr. H Maheshwari, for the appellant.
Mr. S Srimali a/w Mr.Rajesh for respondent no.1/caveator.

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Heard learned counsel for the parties.

Learned counsel for the appellant submits that the appellant is seeking relief against the respondent no.1 only and the relief of the appellant is that the respondent no.1 be restrained from alienating the property in dispute which she has purchased from the respondent no.2.

It appears that the dispute arose because of sale of agriculture land by respondent no.2 Smt. Bholi Bai, who according to the appellant, is not wedded wife of deceased Narayan, father of the appellant.

Learned counsel for the respondent no.1 submits that the appellant filed a suit in the revenue court and the injunction application was pending in the revenue court, still she has filed the present suit and sought injunction which was refused by the court below after considering the fact that the suit property was mutated in the name of the appellant and the respondent no.2 also and both of them have dealt with the property for such a long period.

I considered the submissions of learned counsel for the parties in view of the fact that the relief has been claimed only against the respondent no.1 because of the reason that she has purchased the land from the respondent no.2. Only relief claimed by the appellant before this Court is that the respondent no.1 be restrained from alienating the property in dispute. It is also prayed that the respondent no.1 be restrained from acting upon the sale deed.

So far as further alienation is concerned, it will be hit by principle of lis pendence and, therefore, if such a relief is granted to the appellant, then that will serve the purpose for both the parties and by this order, further disputes and involvement of third party interest will be avoided. Therefore, only on this ground alone, the appeal deserves to be allowed for

this relief.

So far as acting upon the sale deed is concerned, the sale deed takes effect with effect of its date or from registration even for the stranger to the sale deed and the benefits which pass on to the purchaser by execution of the sale deed cannot be taken away in a suit for cancellation of the sale deed unless a very strong case is made out by the applicant. In the present case, there is no reason to grant such type of relief which in fact is the ultimate relief in the suit also.

So far as the entries in the revenue records are concerned, if the name of the respondent no.1 is entered in the revenue record on the basis of the sale deed or if it is not entered, it will be of no effect because of the simple reason that the revenue entries are fiscal in nature and the revenue entries neither itself create any right nor extinguish any right. In view of the above, in case, the injunction order is not passed with respect to restraining the revenue authorities from making revenue entries in favour of the respondent no.1, the appellant is not going to suffer any irreparable injury. If the revenue entries are made in favour of the respondent no.1, that is only for the purpose of recovery of revenue from the person

in occupation with the claim of khatedari rights in the land. Therefore, this prayer of the appellant is rejected.

In view of the above, since the respondents no.2 and 3 are formal parties in view of the relief claimed by the appellant, this appeal is partly allowed and it is ordered that the respondent no.1 shall not alienate the property in dispute till the pendency of the suit.

It is made clear that any observation made by this Court in this order may not be treated to be expression of opinion on the merits of the case either in the civil court or in the revenue court.

(PRAKASH TATIA), J.

S.Phophaliya